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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160615524-6999-02]

RIN 0648-BG13

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Scup Fishery; Framework Adjustment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This action changes the southern and eastern boundaries of the Southern Gear Restricted Area, as recommended by the Mid-Atlantic Fishery Management Council. This rule is intended to increase access to traditional squid fishing areas, while maintaining protection for juvenile scup.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Copies of the Scup Gear Restricted Area Modification Framework, including the draft Environmental Assessment, and the Regulatory Impact Review prepared by the Mid-Atlantic Fishery Management Council in support of this action are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The supporting documents are also accessible via the Internet at: <http://www.mafmc.org/actions/scup-gear-restricted-areas->

framework or

<http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scup/index.html>.

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst,
phone: 978-281-9244; e-mail: *Emily.Gilbert@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Scup (*Stenotomus chrysops*) is managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission through the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The management unit specified in the FMP for scup is U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Currently, the scup stock is not overfished and it is not experiencing overfishing.

When scup was overfished prior to 2009, the Council and NMFS determined that juvenile scup mortality in small-mesh fisheries (*i.e.*, those fisheries using mesh smaller than the minimum size specified in the scup regulations) was highly problematic. Two seasonal Gear Restricted Areas (GRAs) were implemented to prohibit vessels fishing for squid, black sea bass, or silver hake (also known as whiting) from using mesh smaller than the 5.0-inch (12.7-cm) minimum scup mesh size in the areas during certain times of year. The GRAs were implemented in 2000 (May 24, 2000, 65 FR 33486) and modified several times between 2000 and 2005 (December 27, 2000, 65 FR 81761; March 1, 2001, 66 FR 12902; January 2, 2003, 68 FR 60; January 4, 2005, 70 FR 303). Details on the changes to the GRAs are described in those actions and are not repeated here. Most often the changes were

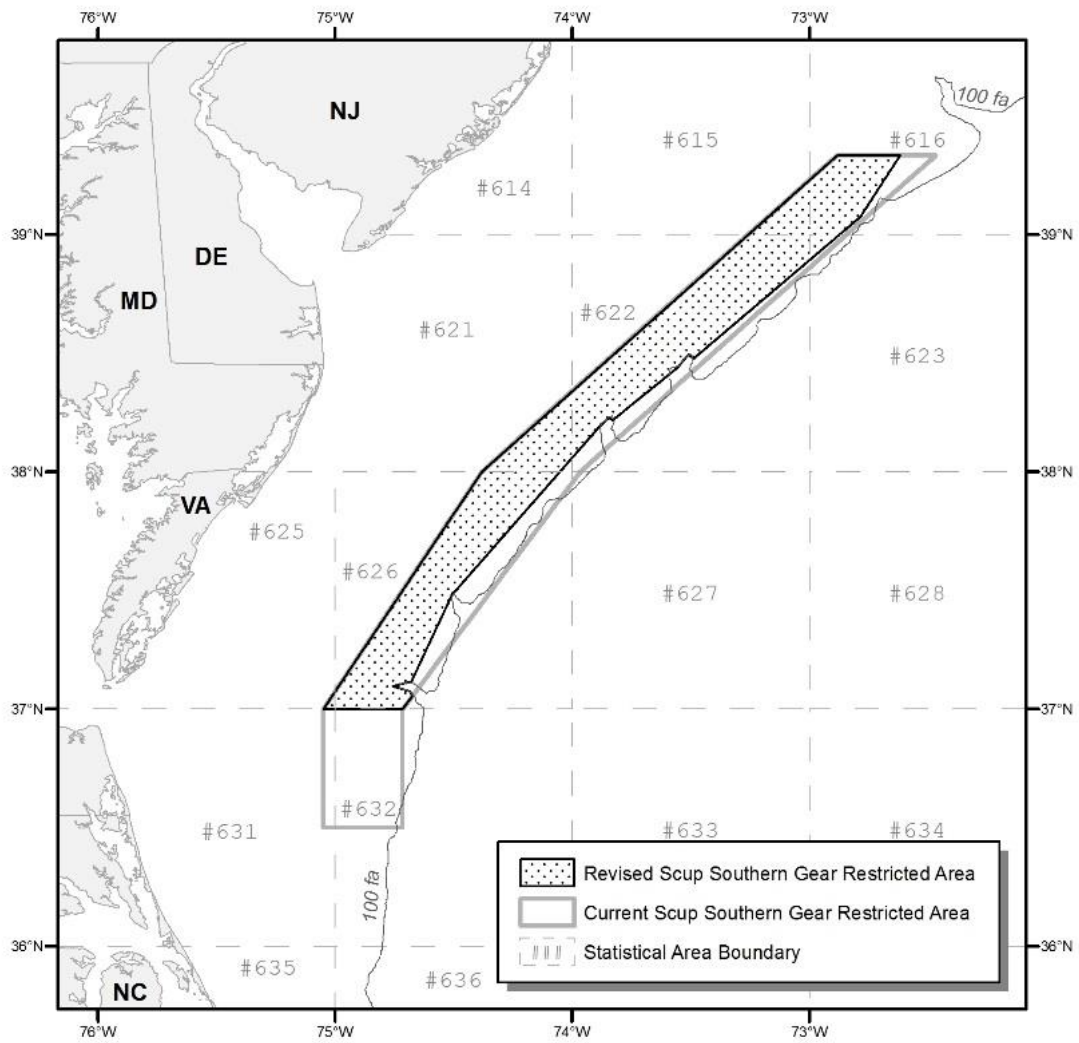
enacted to accommodate access for one of the regulated small-mesh fisheries, while still maintaining an effective level of protection for juvenile scup. The GRAs in their current forms have been in effect since 2003 (Northern GRA) and 2005 (Southern GRA). Scup has been considered rebuilt since 2009 and is currently estimated to be approximately 210 percent of the biomass target. Research by the Northeast Fisheries Science Center suggests that minimizing juvenile mortality in the GRAs likely contributed to the recovery and expansion of the scup population. This action only modifies the Southern GRA. The Northern GRA remains unchanged.

The background on the Council's development of this action is described in the proposed rule and not repeated here (August 18, 2016, 81 FR 55166).

Final Southern GRA Modifications

This action removes the southern portions of the GRA that overlap statistical areas 631 and 632. Additionally, this action shifts the eastern boundary of the Southern GRA west, roughly following the outermost points of the proposed Deep-Sea Coral Protection Areas (September 26, 2016, 81 FR 66245). If approved, the Council's pending Deep-Sea Coral Amendment would implement area closures that would further restrict access to several canyon areas year-round. Many of these canyons are partially contained within the current boundaries of the Southern GRA, and this action would align those boundaries. The current and final Southern GRA are shown in the figure below. The updated Southern GRA coordinates are provided in the final regulatory text.

Figure 1. Current and Updated Southern Gear Restricted Areas



The Council designed these modifications to minimize overlap between the GRA and the recommended discrete deep-sea coral areas. The eastern boundary is intended to restore access to the squid fishery in areas approximately 55 to 60 fathoms (100 to 110 m) and deeper. The shift of the southern boundary north is based on analysis suggesting there are very few scup in statistical areas 631 and 632 from January through March. This action will marginally reduce the amount of protection for the scup stock in return for a modest increase in squid availability. The updated Southern GRA is smaller than the current one; slightly reducing coverage of the scup estimated to be covered by the GRA. However, analysis shows that this change will result in a modest increase in access for the squid and whiting fisheries and a slight increase in the availability of black sea bass in the GRA from January 1-March 15. It is important to note, however, that the amount of each stock (by weight) currently estimated to be within the GRA during the winter is only a small fraction of the total stock abundance. As a result, we do not expect the boundary changes to compromise the scup stock or result in overfishing for squid, black sea bass, or whiting.

Comments and Responses

We received five comments on the measures outlined in the August 18, 2016 (81 FR 55166), proposed rule. All commenters expressed their support for the boundary modifications, noting the importance of balancing the needs of the squid fishing industry with the ability to protect juvenile scup.

One commenter also suggested that NMFS and the Council continue to monitor the squid fishery in the modified GRA area to see how the squid fishery benefits from these changes and how scup discards may be affected. Although we do not expect this boundary change to compromise the scup stock or result in overfishing for squid, black sea bass, or

whiting, we agree that continued review of scup discards in this area is important. The Council can further modify this GRA in a future framework adjustment action if available information indicates the need to do so.

Changes from Proposed Rule

The Southern GRA coordinates at § 648.124(a)(1) are slightly adjusted from those presented in the proposed rule to remove an extraneous point and to better align with the coordinates proposed for the Deep-Sea Coral Protection Areas.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 3, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.124, revise paragraph (a)(1) to read as follows:

§ 648.124 Scup commercial season and commercial fishery area restrictions.

(a) *Southern Gear Restricted Area*—(1) *Restrictions*. From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for

at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

Southern Gear Restricted Area

Point	Latitude	Longitude
SGA1	39° 20' N	72° 37' W
SGA2	39° 4.38' N	72° 47.22' W
SGA3	38° 28.65' N	73° 29.37' W
SGA4	38° 29.72' N	73° 30.65' W
SGA5	38° 26.32' N	73° 33.44' W
SGA6	38° 25.08' N	73° 34.99' W
SGA7	38° 13.15' N	73° 49.77' W
SGA8	38° 13.74' N	73° 50.73' W
SGA9	38° 11.98' N	73° 52.65' W
SGA10	37° 29.53' N	74° 29.95' W
SGA11	37° 29.43' N	74° 30.29' W
SGA12	37° 28.6' N	74° 30.6' W
SGA13	37° 6.97' N	74° 40.8' W
SGA14	37° 5.83' N	74° 45.57' W
SGA15	37° 4.43' N	74° 41.03' W
SGA16	37° 3.5' N	74° 40.39' W
SGA17	37° N	74° 43' W
SGA18	37° N	75° 3' W
SGA19	38° N	74° 23' W
SGA20	39° 20' N	72° 53' W
SGA1	39° 20' N	72° 37' W

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